

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE**

**BOARD OF TRUSTEES OF THE  
EMPLOYEE PAINTERS' TRUST, et al.,**

**Plaintiffs,**

V.

## **STRIPE RITE, INC., et al.,**

### Defendants.

Case No. 2:19-cv-00223-RAJ

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Hearing Date: October 1, 2019  
Without Oral Argument

## **1. Purposes and Limitations**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1       **2. “Confidential” Material**

2           “Confidential” material shall include the following documents and tangible things  
 3 produced or otherwise exchanged: Defendants’ balance sheets, income statements, and other  
 4 financial statements.

5       **3. Scope**

6           The protections conferred by this agreement cover not only confidential material (as  
 7 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
 8 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
 9 conversations, or presentations by parties or their counsel that might reveal confidential material.

10          However, the protections conferred by this agreement do not cover information that is in  
 11 the public domain or becomes part of the public domain through trial or otherwise.

12       **4. Access to, and Use of, Confidential Material**

13          A.     **Basic Principles.** A receiving party may use confidential material that is  
 14 disclosed or produced by another party or by a non-party in connection with this case only for  
 15 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
 16 disclosed only to the categories of persons and under the conditions described in this agreement.  
 17 Confidential material must be stored and maintained by a receiving party at a location and in a  
 18 secure manner that ensures that access is limited to the persons authorized under this agreement.

19          B.     **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise  
 20 ordered by the court or permitted in writing by the designating party, a receiving party may  
 21 disclose any confidential material only to:

22           (i).    the receiving party’s counsel of record in this action, as well as employees of  
 23 counsel to whom it is reasonably necessary to disclose the information for this litigation;

1                         (ii). the officers, directors, and employees (including in house counsel) of the  
 2 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
 3 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
 4 designated;

5                         (iii). experts and consultants to whom disclosure is reasonably necessary for this  
 6 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7                         (iv). the court, court personnel, and court reporters and their staff;

8                         (v). copy or imaging services retained by counsel to assist in the duplication of  
 9 confidential material, provided that counsel for the party retaining the copy or imaging service  
 10 instructs the service not to disclose any confidential material to third parties and to immediately  
 11 return all originals and copies of any confidential material;

12                         (vi). during their depositions, witnesses in the action to whom disclosure is reasonably  
 13 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
 14 A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
 15 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
 16 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
 17 under this agreement;

18                         (vii). the author or recipient of a document containing the information or a custodian or  
 19 other person who otherwise possessed or knew the information.

20                         **C. Filing Confidential Material.** Before filing confidential material or discussing or  
 21 referencing such material in court filings, the filing party shall confer with the designating party,  
 22 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
 23 remove the confidential designation, whether the document can be redacted, or whether a motion  
 24 to seal or stipulation and proposed order is warranted. During the meet and confer process, the

1 designating party must identify the basis for sealing the specific confidential information at issue,  
 2 and the filing party shall include this basis in its motion to seal, along with any objection to  
 3 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
 4 followed and the standards that will be applied when a party seeks permission from the court to  
 5 file material under seal. A party who seeks to maintain the confidentiality of its information  
 6 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the  
 7 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,  
 8 in accordance with the strong presumption of public access to the Court's files.

9           The parties shall, in addition, comply with section 7 of the Court's standing order [Dkt. #4  
 10 in this case] concerning applications to seal documents.

11       **5. Designating Protected Material**

12       **A. Exercise of Restraint and Care in Designating Material for Protection.** Each  
 13 party or non-party that designates information or items for protection under this agreement must  
 14 take care to limit any such designation to specific material that qualifies under the appropriate  
 15 standards. The designating party must designate for protection only those parts of material,  
 16 documents, items, or oral or written communications that qualify, so that other portions of the  
 17 material, documents, items, or communications for which protection is not warranted are not  
 18 swept unjustifiably within the ambit of this agreement.

19           Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 21 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
 22 and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

**B. Manner and Timing of Designations.** Except as otherwise provided in this agreement (see, e.g., the final sentence of section 5.B(ii) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(i). Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(ii). Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(iii). Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

1           **C. Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to  
 2 designate qualified information or items does not, standing alone, waive the designating party's  
 3 right to secure protection under this agreement for such material. Upon timely correction of a  
 4 designation, the receiving party must make reasonable efforts to ensure that the material is  
 5 treated in accordance with the provisions of this agreement.

6           **6. Challenging Confidentiality Designations**

7           **A. Timing of Challenges.** Any party or non-party may challenge a designation of  
 8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 12 original designation is disclosed.

13           **B. Meet and Confer.** The parties must make every attempt to resolve any dispute  
 14 regarding confidential designations without court involvement. Any motion regarding  
 15 confidential designations or for a protective order must include a certification, in the motion or in  
 16 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
 17 conference with other affected parties in an effort to resolve the dispute without court action. The  
 18 certification must list the date, manner, and participants to the conference. A good faith effort to  
 19 confer requires a face-to-face meeting or a telephone conference.

20           **C. Judicial Intervention.** If the parties cannot resolve a challenge without court  
 21 intervention, the designating party may file and serve a motion to retain confidentiality under  
 22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 24 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 2 maintain the material in question as confidential until the court rules on the challenge.

3 **7. Protected Material Subpoenaed or Ordered Produced in Other Litigation**

4 If a party is served with a subpoena or a court order issued in other litigation that compels  
 5 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party  
 6 must:

7 (i). promptly notify the designating party in writing and include a copy of the  
 8 subpoena or court order;

9 (ii). promptly notify in writing the party who caused the subpoena or order to issue in  
 10 the other litigation that some or all of the material covered by the subpoena or order is subject to  
 11 this agreement. Such notification shall include a copy of this agreement; and

12 (iii). cooperate with respect to all reasonable procedures sought to be pursued by the  
 13 designating party whose confidential material may be affected.

14 **8. Unauthorized Disclosure of Protected Material**

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
 16 material to any person or in any circumstance not authorized under this agreement, the receiving  
 17 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
 18 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
 19 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
 20 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
 21 Bound” that is attached hereto as Exhibit A.

22 **9. Inadvertent Production of Privileged or Otherwise Protected Material**

23 When a producing party gives notice to receiving parties that certain inadvertently  
 24 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
2 is not intended to modify whatever procedure may be established in an e-discovery order or  
3 agreement that provides for production without prior privilege review. The parties agree to the  
4 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 **10. Non-Termination and Return of Documents**

6 Within 60 days after the termination of this action, including all appeals, each receiving  
7 party must return all confidential material to the producing party, including all copies, extracts and  
8 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
12 product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a  
14 designating party agrees otherwise in writing or a court orders otherwise.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 Dated: October 1, 2019

*/s/Sean W. McDonald/DAF by consent*

17 Attorneys for Plaintiffs

18 Dated: October 1, 2019

*/s/Darren A. Feider*

19 Attorneys for Defendants

20 PURSUANT TO STIPULATION, IT IS SO ORDERED

21 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
22 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
23 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
24

1 documents, including the attorney-client privilege, attorney work-product protection, or any other  
2 privilege or protection recognized by law.

3 Dated: \_\_\_\_\_

4 U.S. District Judge Richard A. Jones

5 Prepared and presented by:

6 /s/Sean W. McDonald/DAF by consent

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**EXHIBIT A**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Trustees, et al. v. Stripe Rite, Inc., et al.*, Case No. 2:19-cv-00223-RAJ. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

Signature: \_\_\_\_\_

## **Certificate of Service**

I, Nani Vo, certify under penalty of perjury under the laws of the United States and the State of Washington that, on October 1, 2019, I served this document upon the persons listed below in the manner shown next to their name:

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s/Nani Vo

Nani Vo